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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,445	09/25/2003	Rainer Hartwig	ECC-5764	3423
30452 7590 02/05/2009 EDWARDS LIFESCIENCES CORPORATION LEGAL DEPARTMENT ONE EDWARDS WAY IRVINE, CA 92614				
EXAMINER				
MARSH, STEVEN M				
ART UNIT		PAPER NUMBER		
3632				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/670,445

**Applicant(s)**

HARTWIG ET AL.

**Examiner**

STEVEN M. MARSH

**Art Unit**

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 September 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 and 21-28 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-17 and 21-28 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is the fourth office action for U.S. Application 10/670,445 for a Container Support Device filed on September 25, 2003. Claims 1-17 and 21-28 are pending. Claim 16 is withdrawn.

### ***Election/Restrictions***

Claims 1-15 and 17 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Applicant is attempting to claim the combination of a weight scale and a container support device when only the subcombination of a container support device was previously claimed. The previous amendment to the preamble claiming a hemofiltration system was permitted because the body of the claim still only claimed the subcombination of the container support device.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-15 and 17 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent 3,750,994 to Bieschke. Bieschke discloses a support device that could support a fluid container, with an attachment member (42, 43) with an attachment member base (43) that can couple a container support device to a weight scale. There is a joint body (30, 45) with first (30) and second (45) joint members attached to the attachment member and configured to rotate about a vertical axis thereof. There is also a container support body (23) secured to the joint body and at least one container support (21) extending from the support body and coupled to the body in rotatable relation. The container support is oriented to stably support a fluid container (a tube could be secured to the support with an elastic fastener, such as a rubber band) and the container support is oriented at a non-perpendicular angle with respect to the vertical axis (it is parallel to it). The support also has a flared free end (tab 25) that could support a container.

There is a rotation mount (34,35,42) positioned on the attachment member base and configured to have the joint body rotatably coupled thereto. The second joint member is movably coupled to the first joint member in movable relation and the first joint member has a first joint body base (32) with a rotation body (54,58) located thereon. There is a universal joint assembly with multiple (54, 58) block and pin universal joints and there are at least two container supports equidistant from the vertical axis of the support body (the end caps on the end of 16, not numbered in the

'994 patent, but described in U.S. Patent 3,191,663 to Bieschke, which would be the 2<sup>nd</sup> and 3<sup>rd</sup> container supports... 21 being the first). The support device is configured to be coupled to a system for providing blood filtration therapies. The second joint member is configured to move along a first arc A1 and the support body is movably coupled to the second joint member and configured to move along a second arc A2, the arc A1 being perpendicular to A2.

### ***Response to Arguments***

Applicant's arguments filed September 24, 2008 have been fully considered with respect to claims 21-28, but they are not persuasive. In response to applicant's arguments, element 45 is "movably coupled" to bracket 23. Using the broadest interpretation of "movably coupled" two objects that are coupled together in such a way that they can be moved relative to each other would meet the limitation. In the instant case, element 45 and bracket 23 can be moved relative to each other by simply loosening the nut on the bolt and moving the element or the bracket.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (571) 272-6819. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

/S. M. M./  
Steven Marsh  
Examiner, Art Unit 3632

/Anita M. King/  
Primary Examiner, Art Unit 3632

January 30, 2009